

# **JOURNAL OF THE SENATE**

## **NINETIETH SESSION**

---

FIFTH DAY

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STATE OF SOUTH DAKOTA  
Senate Chamber, Pierre  
Tuesday, January 20, 2015

The Senate convened at 2:00 p.m., pursuant to adjournment, the President presiding.

The prayer was offered by the Chaplain, Rev. John Armstrong, followed by the Pledge of Allegiance led by Senate page Ross Ackerman.

Roll Call: All members present except Sen. Parsley who was excused.

### **APPROVAL OF THE JOURNAL**

MR. PRESIDENT:

The Committee on Legislative Procedure respectfully reports that the Secretary of the Senate has had under consideration the Senate Journal of the fourth day.

All errors, typographical or otherwise, are duly marked in the temporary journal for correction.

And we hereby move the adoption of the report.

Respectfully submitted,  
Corey Brown, Chair

Which motion prevailed.

**COMMUNICATIONS AND PETITIONS**

January 20, 2015

The Honorable Matt Michels  
South Dakota State Senate  
500 East Capitol Avenue  
Pierre, South Dakota 57501

Dear President Michels and Members of the Senate,

I have the honor to herewith deliver to you:

Executive Reorganization Order 2015-01.

This document has also been filed with the Speaker of the House and the Secretary of State.

Sincerely,  
Dennis Daugaard

See Senate Journal page 62 for the Executive Reorganization Order 2015-01.

**REPORTS OF STANDING COMMITTEES**

MR. PRESIDENT:

The Committee on Judiciary respectfully reports that it has had under consideration SB 12 and 15 and returns the same with the recommendation that said bills do pass.

Respectfully submitted,  
Craig Tieszen, Chair

Also MR. PRESIDENT:

The Committee on Commerce and Energy respectfully reports that it has had under consideration SB 18 and 58 and returns the same with the recommendation that said bills do pass.

1 Also MR. PRESIDENT:

2 The Committee on Commerce and Energy respectfully reports that it has had under  
3 consideration SB 31 and returns the same with the recommendation that said bill do pass and  
4 be placed on the consent calendar.

5 Also MR. PRESIDENT:

6 The Committee on Commerce and Energy respectfully reports that it has had under  
7 consideration SB 30 and returns the same with the recommendation that said bill be amended  
8 as follows:

9 30ra

10 On page 1, line 7, of the printed bill, delete "the provisions of §§ 58-11-64 to 58-11-76,  
11 inclusive" and insert "this chapter".

12 And that as so amended said bill do pass and be placed on the consent calendar.

13 Also MR. PRESIDENT:

14 The Committee on Commerce and Energy respectfully reports that it has had under  
15 consideration SB 36 and returns the same with the recommendation that said bill be amended  
16 as follows:

17 36fa

18 On page 1, between lines 11 and 12 of the printed bill, insert:

19 "Section 3. That § 13-59-17 be amended to read as follows:

20 13-59-17. The State Board of Regents ~~shall have full and complete~~ has authority over ~~said~~  
21 the Lake County Historical Museum building, ~~subject to § 13-59-18 and~~ subject to the right of  
22 the donor corporation to make use ~~thereof of the building~~ for ~~their~~ its purposes as provided in  
23 § 13-59-12, ~~and the~~. The use which the university is to make of ~~such the~~ building shall be so  
24 arranged as not to interfere with the donor's rights, privileges, and purposes ~~therein~~.

25 The ~~said~~ university, at its expense, shall furnish the maintenance and operation costs of ~~said~~  
26 the building from its facilities in exchange for the use ~~thereof of the building~~ by the university  
27 as specified in § 13-59-12."

28 And that as so amended said bill do pass and be placed on the consent calendar.

29 Respectfully submitted,  
30 R. Blake Curd, Chair

## MESSAGES FROM THE HOUSE

MR. PRESIDENT:

I have the honor to inform your honorable body that the House has adopted the report of the Joint-Select Committee relative to making arrangements for a memorial recognition of deceased former members of the Senate and House.

Also MR. PRESIDENT:

I have the honor to inform your honorable body that the House has adopted the report of the Joint-Select Committee relative to making arrangements for the distribution of the official directory, Senate and House Journals, bills, and other legislative printing.

Also MR. PRESIDENT:

I have the honor to inform your honorable body that the House has adopted the report of the Joint-Select Committee for the purpose of securing chaplains for the Ninetieth Legislative Session.

Respectfully,  
Arlene Kvislen, Chief Clerk

## FIRST READING OF SENATE BILLS AND JOINT RESOLUTIONS

SB 73 Introduced by: Senators Solano, Bradford, Brown, Buhl O'Donnell, Cammack, Curd, Ewing, Frerichs, Greenfield (Brock), Haggar (Jenna), Haverly, Heineman (Phyllis), Heinert, Holien, Hunhoff (Bernie), Lederman, Monroe, Novstrup (David), Otten (Ernie), Parsley, Peters, Peterson (Jim), Rempelberg, Rave, Rusch, Soholt, Sutton, Tidemann, Tieszen, Vehle, and White and Representatives Gosch, Anderson, Bartling, Beal, Brunner, Conzet, Craig, Cronin, Deutsch, DiSanto, Dryden, Duvall, Feickert, Gibson, Greenfield (Lana), Haggar (Don), Harrison, Haugaard, Hawks, Hawley, Heinemann (Leslie), Hickey, Holmes, Hunhoff (Jean), Hunt, Jensen (Alex), Johns, Kirschman, Klumb, Langer, May, McCleerey, Mickelson, Munsterman, Novstrup (Al), Otten (Herman), Partridge, Peterson (Kent), Qualm, Rasmussen, Ring, Romkema, Rounds, Rozum, Schoenbeck, Schoenfish, Schrempp, Sly, Soli, Solum, Stalzer, Stevens, Tulson, Verchio, Werner, Westra, Wiik, Willadsen, Wink, Wollmann, and Zikmund

FOR AN ACT ENTITLED, An Act to improve public safety regarding juvenile justice.

Was read the first time and referred to the Committee on State Affairs.

1                   **SECOND READING OF CONSENT CALENDAR ITEMS**

2           SB 35: FOR AN ACT ENTITLED, An Act to repeal certain outdated and unnecessary  
3 statutes and rules related to the Department of Veterans Affairs.

4           Was read the second time.

5           The question being "Shall SB 35 pass?"

6           And the roll being called:

7           Yeas 34, Nays 0, Excused 1, Absent 0

8           Yeas:

9   Bradford; Brown; Buhl O'Donnell; Cammack; Curd; Ewing; Frerichs; Greenfield (Brock);  
10 Haggar (Jenna); Haverly; Heineman (Phyllis); Heinert; Holien; Hunhoff (Bernie); Jensen (Phil);  
11 Lederman; Monroe; Novstrup (David); Olson; Omdahl; Otten (Ernie); Peters; Peterson (Jim);  
12 Rampelberg; Rave; Rusch; Soholt; Solano; Sutton; Tidemann; Tieszen; Van Gerpen; Vehle;  
13 White

14          Excused:

15   Parsley

16          So the bill having received an affirmative vote of a majority of the members-elect, the  
17 President declared the bill passed and the title was agreed to.

18                   **SECOND READING OF SENATE BILLS AND JOINT RESOLUTIONS**

19          SB 23: FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the  
20 ownership and management of the South Dakota Art Museum.

21          Was read the second time.

22          The question being "Shall SB 23 pass?"

23          And the roll being called:

24          Yeas 34, Nays 0, Excused 1, Absent 0

25          Yeas:

26   Bradford; Brown; Buhl O'Donnell; Cammack; Curd; Ewing; Frerichs; Greenfield (Brock);  
27 Haggar (Jenna); Haverly; Heineman (Phyllis); Heinert; Holien; Hunhoff (Bernie); Jensen (Phil);  
28 Lederman; Monroe; Novstrup (David); Olson; Omdahl; Otten (Ernie); Peters; Peterson (Jim);  
29 Rampelberg; Rave; Rusch; Soholt; Solano; Sutton; Tidemann; Tieszen; Van Gerpen; Vehle;  
30 White

1       Excused:  
2   Parsley

3        So the bill having received an affirmative vote of a majority of the members-elect, the  
4        President declared the bill passed and the title was agreed to.

5 Sen. Monroe moved that the Senate do now adjourn, which motion prevailed and at  
6 2:27 p.m. the Senate adjourned.

7 Kay Johnson, Secretary

8 **EXECUTIVE REORGANIZATION ORDER**  
9 **No. 2015-01**

10 WHEREAS, Article IV, Section 8, of the constitution of the state of South Dakota  
11 provides that, "Except as to elected constitutional officers, the Governor may make such  
12 changes in the organization of offices, boards, commissions, agencies and instrumentalities,  
13 and in allocation of their functions, powers and duties, as he considers necessary for efficient  
14 administration. If such changes affect existing law, they shall be set forth in executive  
15 orders, which shall be submitted to the Legislature within five legislative days after it  
16 convenes, and shall become effective, and shall have the force of law, within ninety days  
17 after submission, unless disapproved by a resolution concurred in by a majority of all the  
18 members of either house"; and

19 WHEREAS, this executive order has been submitted to the 90th Legislative Assembly  
20 on the 5th legislative day, being the 20th day of January, 2015;

IT IS, THEREFORE, BY EXECUTIVE ORDER, directed that the executive branch of  
state government be reorganized to comply with the following sections of this order.

23 **GENERAL PROVISIONS**

24 Section 1. This executive order shall be known and may be cited as the "Executive  
25 Reorganization Order 2015-01".

26 Section 2. Any agency not enumerated in this order, but established by law within  
27 another agency which is transferred to a principal department under this order, shall also be  
28 transferred in its current form to the same principal department and its functions shall be  
29 allocated between itself and the principal department as they are now allocated between  
30 itself and the agency within which it is established.

31 Section 3. "Agency" as used in this order shall mean any board, authority, commission,  
32 department, bureau, division or any other unit or organization of state government.

1 Section 4. "Function" as used in this order shall mean any authority, power,  
2 responsibility, duty or activity of an agency, whether or not specifically provided for by law.

3 Section 5. Unless otherwise provided by this order, division directors shall be appointed  
4 by the head of the department or bureau of which the division is a part, and shall be  
5 removable at the pleasure of the department or bureau head, provided, however, that both the  
6 appointment and removal of division directors shall be subject to approval by the Governor.

7 Section 6. It is the intent of this order not to repeal or amend any laws relating to  
8 functions performed by an agency, unless the intent is specifically expressed in this order or  
9 unless there is an irreconcilable conflict between this order and those laws.

10 Section 7. If a part of this order is invalid, all valid parts that are severable from the  
11 invalid part remain in effect. If a part of this order is invalid in one or more of its  
12 applications, the part remains in effect in all valid applications.

13 Section 8. Except when inconsistent with the other provisions of this order all rules,  
14 regulations and standards of the agencies involved in executive reorganization in effect on  
15 the effective date of this order, shall continue with full force and effect until they are  
16 specifically altered, amended, or revoked in the manner provided by law, unless the statutory  
17 authority for such rules is superseded by this order.

18 Section 9. It is hereby declared that the sections, clauses, sentences and parts of this  
19 executive order are severable, are not matters of mutual essential inducement, and any of  
20 them may be excised by any court of competent jurisdiction if any section, clause, sentence  
21 or part of this executive order would otherwise be unconstitutional or ineffective.

22 Section 10. In the event that it has been determined that a function of a transferred  
23 agency, which has not been eliminated by this order, and its associated records, personnel,  
24 equipment, facilities, unexpended balances or appropriations, allocations or other funds have  
25 not been clearly allocated to an agency, the Governor shall specify by interim procedures the  
26 allocation of the function and its associated resources. At the next legislative session  
27 following the issuance of such interim procedures, the Governor shall make  
28 recommendations concerning the proper allocation of the functions of transferred agencies  
29 which are not clearly allocated by this order. Any interim procedures issued in conjunction  
30 with this section shall be filed with the Secretary of state.

31 Section 11. The rights, privileges and duties of the holders of bonds and other obligations  
32 issued, and of the parties to contracts, leases, indentures, and other transactions entered into,  
33 before the effective date of this order, by the state or by any agency, officer, or employee  
34 thereof, and covenants and agreements as set forth therein, remain in effect, and none of  
35 those rights, privileges, duties, covenants, or agreements are impaired or diminished by  
36 abolition of an agency in this order. The agency to which functions of another agency are  
37 transferred is substituted for that agency and succeeds to its rights and leases, indentures, and  
38 other transactions.

Section 12. No judicial or administrative suit, action or other proceeding lawfully commenced before the effective date of this order by or against any agency or any officer of the state, in his official capacity or in relation to the discharge of his official duties, shall abate or be affected by reason of the taking effect of any reorganization under the provisions of this order. The court may allow the suit, action or other proceeding to be maintained by or against the successor of any agency or any officer affected by this order.

Section 13. If any part of this order is ruled to be in conflict with federal requirements which are a prescribed condition to the receipt of federal aid by the state, an agency or a political subdivision, that part of this order has no effect and the Governor may by executive order make necessary changes to this order to receive federal aid, and the changes will remain in effect until the last legislative day of the next legislative session or until the Legislature completes legislation addressed to the same question, whichever comes first.

Section 14. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to make the name and title changes necessary to correlate and integrate the organizational changes made by this Executive Reorganization Order into the South Dakota Codified Laws.

Section 15. Any provisions of law in conflict with this order are superseded.

Section 16. Whenever a function is transferred by this order, all personnel, records, property, unexpended balances of appropriations, allocations or other funds utilized in performing the function are also transferred by this order.

Section 17. The effective date of this Executive Reorganization Order #2015-01 shall be ninety days after its submission to the Legislature.

**Office of History and South Dakota State Historical Society Combined and  
Transferred to the Department of Education**

Section 18. The Office of History and its functions established in chapters 1-18, 1-18B, 1-18C, 1-19, 1-19A, and 1-19B, are hereby transferred to the State Historical Society.

Section 19. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to amend the following sections by deleting references to "Office of History" or "office" and inserting "State Historical Society."

1-18-2

1-18-31.2

1-18B-9

1-18B-11

1-18B-12

1-18B-13

1-18C-2

1-19-2.1

1-19-6



1 1-19A-3  
2 1-19A-4  
3 1-19A-5  
4 1-19A-6  
5 1-19A-7  
6 1-19A-8  
7 1-19A-9  
8 1-19A-10  
9 1-19A-11  
10 1-19A-11.1  
11 1-19A-12  
12 1-19A-13  
13 1-19A-13.1  
14 1-19A-14  
15 1-19A-15  
16 1-19A-16  
17 1-19A-17  
18 1-19A-19  
19 1-19B-8  
20 1-45-23  
21 34-27-31

22 Section 20. The State Historical Society created pursuant to chapter 1-18 and its functions  
23 are hereby transferred to the Department of Education.

24 Section 21. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the  
25 Legislative Research Council are requested to amend the following sections by deleting  
26 references to the "Department of Tourism" or the Secretary of "Tourism" and inserting the  
27 "Department of Education" or the Secretary of "Education" as appropriate.

28 1-18-2  
29 1-18-2.2  
30 1-18-3  
31 1-18-20  
32 1-18-32.1  
33 1-18C-2  
34 1-18C-3  
35 1-18C-6  
36 1-19-2.1  
37 1-19B-8  
38 1-20-19  
39 1-20-20

40 Section 22. That § 1-18-2.1 be repealed.

41 ~~1-18-2.1. The Office of History shall perform all the functions of the following former~~  
42 ~~agencies:~~

- 1 ~~———— (1) The Department of History, created by chapter 1-18; and~~  
2 ~~———— (2) The Verendrye Memorial Commission, created by chapter 1-19.~~

3 Section 23. That § 1-18B-1 be amended to read as follows:

- 4 1-18B-1. ~~Terms~~ The term "board," as used in this chapter ~~mean~~ means  
5 ~~(1) "Board," the State Historical Society Board of Trustees provided for by § 1-18-12.2;~~  
6 ~~and~~  
7 ~~(2) "Office," the Office of History within the Department of Tourism.~~

8 Section 24. That § 1-18B-10 be amended to read as follows:

9 1-18B-10. A duly certified copy of any paper, document, article, or advertisement in the  
10 custody of the ~~Cultural Preservation Office~~ State Historical Society made and certified by an  
11 executive officer thereof may be accepted as prima facie evidence of the contents thereof in  
12 any court or proceeding in this state.

13 Section 25. That § 1-19A-2 be amended to read as follows:

14 1-19A-2. Definition of terms. Terms used in this chapter mean:

- 15 (1) "Board," the State Historical Society Board of Trustees established by § 1-18-12.2;  
16 (2) "Historic preservation," the research, protection, restoration, and rehabilitation of  
17 districts, sites, buildings, structures, and objects significant in the history, architecture,  
18 archaeology, paleontology, or culture of the state;  
19 (3) "Historic property," any building, structure, object, district, area, or site that is  
20 significant in the history, architecture, archaeology, paleontology, or culture of the state,  
21 its communities or the nation;  
22 ~~(4) "Office" or "Office of History," the Office of History of the Department of Tourism;~~  
23 ~~(5)~~ (4) "Rehabilitation," returning property to a state of utility, through expansion,  
24 addition, repair, or alteration, which makes possible an efficient contemporary use  
25 while retaining those portions of the property, which qualify such property for  
26 placement on the state register of historic places;  
27 ~~(6)~~ (5) "Restoration," the repair or replacement of historically significant features which  
28 qualify a structure or object for recognition by the state register of historic places.

29 Section 26. That § 1-52-2 be amended to read as follows:

30 1-52-2. The Department of Tourism and State Development is abolished. The position of  
31 secretary of tourism and state development is abolished. The following functions of the

former Department of Tourism and State Development are transferred to the Department of Tourism:

- (1) Office of Tourism;
- (2) Board of Tourism;
- ~~(3) Office of History;~~
- ~~(4) State Historical Society Board of Trustees;~~
- ~~(5) (3) State Arts Council;~~ and

such other tourism related functions as the Governor shall direct.

The secretary of the Department of Tourism shall perform the functions of the former secretary of the Department of Tourism and State Development related to tourism

Section 27. That § 1-52-9 be repealed.

~~1-52-9. The secretary of the Department of Tourism shall perform the functions of the former secretary of the Department of Tourism and State Development, relating to the Office of History.~~

Section 28. That § 13-57-6.1 be amended to read as follows:

13-57-6.1. The museum at the University of South Dakota shall continue within the ~~Cultural Preservation Office of the Division of Cultural Affairs~~ State Historical Society of the Department of Education, and all its functions shall be performed by the ~~cultural preservation office~~ State Historical Society as provided by § 1-45-23.

### **Cultural Heritage Center Transferred to the Department of Education**

Section 29. The functions of the Cultural Heritage Center are hereby transferred from the Department of Tourism to the Department of Education.

Section 30. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to amend the following sections by deleting references to the "Department of Tourism" or the Secretary of "Tourism" and inserting the "Department of Education" or the Secretary of "Education" as appropriate.

5-15-49

Section 31. That § 1-52-8 be repealed:

~~1-52-8. The secretary of the Department of Tourism shall perform the functions of the former secretary of the Department of Tourism and State Development, relating to the Cultural Heritage Center.~~

**Office of Emergency Medical Services Transferred from the Department of Public  
Safety to the Department of Health**

Section 32. The Office of Emergency Medical Services is hereby transferred from the Department of Public Safety to the Department of Health. The Secretary of the Department of Health shall perform the functions of the Secretary of the Department of Public Safety relating to the Office of Emergency Medical Services.

Section 33. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to amend the following sections by deleting references to the "Department of Public Safety" or the Secretary of "Public Safety" and inserting the "Department of Health" or the Secretary of "Health" as appropriate.

34-11-2

34-11-5

34-11-6

34-11-6.1

34-11-6.2

34-11-6.3

34-11-6.4

34-11-8

34-11-11

34-11A-23

34-12F-3

36-4B-1

36-4B-10

36-4B-35

Section 34. That § 1-51-5 be repealed.

~~1-51-5. The Office of Emergency Medical Services, Department of Health, and its functions are transferred to the Department of Public Safety created by Executive Reorganization Order 2003-01. The secretary of the Department of Public Safety shall perform the functions of the secretary of the Department of Health, relating to the Office of Emergency Medical Services.~~

Section 35. That subdivision (2A) of § 32-6B-1 be amended to read as follows:

32-6B-1. (2A) "Authorized emergency vehicle," any vehicle of a fire department and any ambulance and emergency vehicle of a municipal department or public service corporation that are designated or authorized by the Department of Public Safety or the Department of Health;

Section 36. That subdivision (2) of § 32-14-1 be amended to read as follows:

32-14-1. (2) "Authorized emergency vehicle," a vehicle of a fire department, a police vehicle, an ambulance or emergency vehicle of a municipal department or public service

1 corporation that is designated or authorized by the department or the Department of Health,  
2 and an emergency vehicle titled to a local organization for emergency management created  
3 pursuant to chapter 34-48A;

4 **Bottle Water Quality Regulation and Oversight Transferred from the Department of**  
5 **Public Safety to the Department of Environment and Natural Resources**

6 Section 37. The authority to regulate bottled water quality pursuant to sections 39-1-1.1,  
7 39-1-4, and 39-1-5 is hereby transferred from the Department of Public Safety to the  
8 Department of Environment and Natural Resources. The Secretary of the Department of  
9 Environment and Natural Resources shall perform the functions of the Secretary of the  
10 Department of Public Safety relating to the regulation of bottled water quality.

11 Section 38. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the  
12 Legislative Research Council are requested to transfer the existing administrative rules  
13 relating bottled water quality in chapter 20:01:11 to the department of environment and  
14 natural resources.

15 Section 39. That section 39-1-1.1, be amended to read as follows:

16 39-1-1.1. The Division of ~~Commercial Inspection and Licensing~~ Legal and Regulatory  
17 Services of the Department of Public Safety shall perform the functions previously  
18 performed by the Department of Agriculture pursuant to chapters 39-4 and 39-13, except the  
19 authority to regulate bottled water quality which the Department of Environment and Natural  
20 Resources shall perform.

21 Section 40. That section 39-1-4, be amended to read as follows:

22 39-1-4. The secretary of agriculture may, except as provided by § 39-1-1.1, adopt such rules  
23 as may be necessary for the proper and effective enforcement of this title. All such rules  
24 shall become effective in conformity with chapter 1-26. The failure to obey any rule of the  
25 secretary of agriculture adopted pursuant to this section may be enforced by proper legal  
26 procedure in court.

27 The secretary of environment and natural resources may adopt such rules as may be  
28 necessary for the proper and effective enforcement relating to bottled water quality. All such  
29 rules shall become effective in conformity with chapter 1-26. The failure to obey any rule of  
30 the secretary of environment and natural resources adopted pursuant to this section may be  
31 enforced by proper legal procedure in court.

32 Section 41. That section 39-1-5, be amended to read as follows:

33 39-1-5. The secretary of agriculture, or the secretary of public safety, or the secretary of  
34 environment and natural resources when performing the functions described in § 39-1-1.1,  
35 may, when in his judgment such action will promote honesty and fair dealing in the interest  
36 of consumers, adopt rules establishing for any food, under its common or usual name so far

1 as practicable, a reasonable standard of identity and purity. If a standard for a food has been  
2 established by the administrator of the Federal Food, Drug, and Cosmetic Act of 1938, the  
3 secretary of agriculture, ~~or~~ the secretary of public safety, or the secretary of environment and  
4 natural resources shall adopt that standard for this state. The standards shall become  
5 effective in conformity with chapter 1-26. An article of food which does not conform to ~~the~~  
6 such standards is adulterated or misbranded as the case may be.

7 Section 42. That section 39-4-1, be amended to read as follows:

8 39-4-1. The word "food" as used in this title shall include all substances used as food, drink,  
9 confectionery, or condiment by man or other animals, whether simple, mixed, or compound,  
10 and all substances or ingredients to be added to foods for any purpose. For the purposes of  
11 this chapter, the word "food" specifically includes bottled water for sale to the public, the  
12 quality of which is regulated by the secretary of environment and natural resources as  
13 provided for under this chapter.

14 Dated in Pierre, South Dakota, this 20th day of January, 2015.

15 Dennis Dugaard  
16 Governor of South Dakota

17 (Seal)

ATTEST:

18 Shantel Krebs  
19 Secretary of State